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13

14 **UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

16 **In re:**

17 **PG&E CORPORATION,**

18 **- and -**

19 **PACIFIC GAS AND ELECTRIC
COMPANY,**

21 **Debtors.**

Chapter 11 Case No. 19-30088 (DM)
(Lead Case)
(Jointly Administered)

**REORGANIZED DEBTORS' OBJECTION TO
SECURITIES LEAD PLAINTIFF'S MOTION
PURSUANT TO BANKRUPTCY CODE SECTIONS
503(B)(3)(D) AND 503(B)(4) FOR ALLOWANCE
AND PAYMENT OF FEES AND EXPENSES**

22 **Related Docket No. 8950**

22 Affects PG&E Corporation
23 Affects Pacific Gas and Electric
Company
24 Affects both Debtors

24 ** All papers shall be filed in the Lead
25 Case, No. 19-30088 (DM).*

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2 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”),
3 as debtors and reorganized debtors (collectively, the “**Debtors**” or the “**Reorganized Debtors**”) in
4 the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Objection (the
5 “**Objection**”) to the *Securities Lead Plaintiff’s Motion Pursuant to Bankruptcy Code Sections*
6 *503(b)(3)(D) and 503(b)(4) for Allowance and Payment of Fees and Expenses* [Docket No. 8950]
7 (the “**Motion**”), filed by the Public Employees Retirement Association of New Mexico (“**PERA**”).¹

8 **I. PRELIMINARY STATEMENT**

9 In direct contravention of applicable authority, PERA asks this Court to award it over \$4
10 million in attorneys’ fees for actions that were singularly designed to benefit its discrete, parochial
11 interests.² Ironically, PERA argues that its counsel’s repeated efforts to delay the progress of the
12 Chapter 11 Cases and object to Plan confirmation, which were focused on maximizing PERA’s
13 ability to prosecute its claims and causes of action, deserve to be singled out as extraordinary actions
14 that provided a substantial contribution to all other parties in interest. PERA, however, cannot
15 satisfy its heavy burden under section 503(b) of the Bankruptcy Code of demonstrating that its
16 actions actually conveyed substantial benefit to the Debtors’ estates and all creditors and parties in
17 interest, as a whole.

18 PERA’s actions did not benefit the estates or its creditors; indeed, nothing done by PERA
19 during these cases has made the estates more valuable for creditors as a whole. Instead, PERA, as
20 admitted lead counsel for a putative class of securities holders in a separate action (the “**Putative**
21 **Class**”), engaged in actions designed solely to benefit itself in an attempt to better the position of
22 the plaintiffs in that separate federal class action. PERA makes no bones about it; it repeatedly has

24 ¹ Capitalized terms used but not herein defined shall have the meanings ascribed to such terms in
25 the Motion or the *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization*
Dated June 19, 2020 [Docket No. 8048] (as it may be amended, modified, or supplemented and
26 together with any exhibits or schedules thereto, the “**Plan**”), as applicable. All references to page
numbers are to the page numbers inserted by the Court’s electronic filing system.

27 ² See *Reorganized Debtors’ Objection to Securities Lead Plaintiff’s Renewed Motion to Apply*
28 *Bankruptcy Rule 7023 and Certify a Limited Class* [Docket No. 9375] at 23-29 (demonstrating
how PERA’s interests and the interests of the Subordinated Securities Claimants in the Chapter 11
Cases are not coextensive).

1 told this Court that it has fiduciary duties to the Putative Class in the federal class action and has
2 sought to champion those interests by appearing in these cases. In denying a similar request for
3 substantial contribution that was filed by the City of Palo Alto in the Utility's prior 2001 chapter 11
4 case, this Court stated:

5 Despite the tenacious advocacy of [movant's] counsel throughout this case,
6 and the commendable efforts on his part to protect his client's interest, the
7 complexity of this case makes it all the more difficult to single out any
8 particular party whose contribution can be said to be "substantial" within
9 the meaning of section 503(b) and the case law that has interpreted it. The
10 court has little doubt that counsel's contribution to his client's interest was
11 substantial; it cannot say that [movant] stands out as having made a
12 substantial contribution to the case or produced substantial benefits to the
13 estate.

14 *In re Pac. Gas & Elec. Co.*, Case No. 01-30923, 2005 BL 6084, at *5 (Bankr. N.D. Cal. Apr. 28,
15 2005) [Docket No. 16030]. This quote applies equally to PERA's request for substantial
16 contribution here.

17 As the Court is well aware, these Chapter 11 Cases were incredibly complex, made even
18 more so by the unique time pressures presented by the statutory deadline imposed under A.B. 1054.
19 The Plan that was ultimately confirmed embodied a comprehensive, largely consensual,
20 restructuring of the Debtors that fairly and equitably addresses all Fire Claims, other prepetition
claims and equity interests, allows the Utility to timely access the Go-Forward Wildfire Fund,
complies with A.B. 1054, maximizes value for all parties in interest, and ensures that the Utility is
positioned to deliver safe and reliable service to its customers.

21 This remarkable achievement was the culmination of more than sixteen months of arm's
22 length and good faith negotiations among the Debtors and a substantial number of critical parties
23 and constituencies, including, the TCC, as the fiduciary for all Fire Victim Claimants in these
24 Chapter 11 Cases, the other Fire Victim professionals, the Ad Hoc Subrogation Group, the Public
25 Entities, the Shareholder Proponents, the Ad Hoc Noteholder Committee, the Governor's Office,
26 the CPUC, the various other State and Federal Agencies that participated in the cases, and, of course,
27 the invaluable assistance of this Court and former Bankruptcy Judge Newsome. It was only as a

1 result of the collective efforts of all of these parties that the Debtors were able to confirm their Plan
2 in time to meet the June 30, 2020 A.B. 1054 deadline.

3 PERA's efforts, on the other hand, were motivated solely by self-interest. Even PERA
4 admits, as it must, that its actions were "intended to, and in fact did, benefit all members of the
5 [Securities Litigation] Class." Motion at 26. Ninth Circuit law, however, makes clear that a
6 creditor's efforts, even substantial efforts, to improve its own position or the position of those
7 similarly situated is insufficient to constitute a substantial contribution claim. Rather, a substantial
8 contribution is one that sees benefits inure to the estate and its creditors as a whole. *See e.g.*
9 *Goldstein, Horner & Horner v. White Mountain Communities Hosp., Inc. (In re White Mountain*
10 *Communities Hosp., Inc.)*, 2006 WL 6811025, at *6 (B.A.P. 9th Cir. Mar. 21, 2006) ("Substantial
11 contribution requires contribution which provides tangible benefits to the bankruptcy estate and the
12 other unsecured creditors...Extensive participation alone does not warrant an award of fees as an
13 administrative claim.").

14 Nowhere in the Motion is there *any* indication of a beneficiary of PERA's efforts other than
15 PERA and certain other members of the putative federal class action. For example, PERA's defense
16 of the 105(a) Actions and the TCC Derivative Standing Motion (each as defined below) clearly were
17 efforts by PERA solely to preserve its claims and causes of action against the non-debtor defendants
18 in the Securities Litigation (defined below). Put differently, the relief sought by PERA in
19 connection with the 105(a) Actions and the TCC Derivative Standing Motion could never have had
20 any positive impact on anyone other than the plaintiffs in the Securities Litigation. In fact, as PERA
21 admits, its actions with respect to these matters actually *burdened* the estates with additional fees
22 and expenses rather than enhance them. *See* Motion at 10. Such actions cannot constitute a
23 substantial contribution.

24 Similarly, the unsuccessful relief sought by PERA in the Original 7023 Motion (as defined
25 below) solely was for the benefit of PERA (and its counsel in the form of potential contingency
26 fees), and, according to PERA, potentially certain holders of subordinated securities claims (the
27 "**Subordinated Securities Claimants**"). But as the Court is well aware, PERA lost its Original
28 7023 Motion. The Court denied the Original 7023 Motion and instead determined – over PERA's

1 objection – to extend the deadline for Subordinated Securities Claimants to file claims against the
2 estates. PERA now seeks to take credit for the Court’s decision to extend the bar date
3 notwithstanding that PERA never sought such relief and strenuously *objected* to and continues to
4 object to such relief through its appeal to the District Court and its Renewed 7023 Motion (as defined
5 below), forcing the Reorganized Debtors to continue to incur costs opposing PERA’s appeal of that
6 decision (as well as PERA’s appeal of the Confirmation Order). *See Securities Lead Plaintiff’s*
7 *Supplemental Brief in Support of Motion to Apply Bankruptcy Rule 7023 to Class Proofs of Claim*
8 dated February 14, 2020 [Docket No.5786], at 2 (arguing that an extension of the bar date would
9 create “substantial administrative burdens, costs, and delays”); see *Notice of Appeal and Statement*
10 *of Election to Have Appeal Heard By District Court* dated March 6, 2020 [Docket No. 6135]
11 (appealing Bankruptcy Court decision to extend bar date). In addition, the fact that PERA objected
12 to confirmation of the Plan and then later resolved some (but not all) of its objections does not
13 warrant a finding of substantial contribution. Importantly, the sole reason Class 10A-II (HoldCo
14 Recession and Damage Claims) did not accept the Plan was that a disgruntled shareholder having a
15 large liquidated (but unsubstantiated) claim, and having nothing to do with PERA, voted against the
16 Plan. In any event, there is no evidence to suggest that, but for the settled resolution of PERA’s
17 objections, the Plan would not or could not have been confirmed.

18 In contrast to PERA, many of the other constituencies identified above served as plan
19 proponents, exit financing and capital providers, and/or agreed to settle or resolve their claims at
20 substantial discounts or with modified treatment under the Plan that, among other things:
21 (i) enhanced or allowed for recoveries to other unsecured creditor classes or stakeholders;
22 (ii) avoided costly, lengthy, and uncertain litigation, including litigation relating to the estimation
23 of approximately 80,000 Fire Victim Claims and Subrogation Wildfire Claims; and (iii) benefited
24 the estates and the administration of the Chapter 11 Cases as a whole. The same cannot be said of
25 PERA.

26 Finally, there is also no basis to saddle the estates with the burden of paying PERA’s legal
27 fees and expenses because, PERA has a proper source from which to recover amounts expended to
28 further the Securities Litigation. Should PERA be successful in its efforts in the Securities

1 Litigation, PERA and its attorneys will be able to apply to the District Court for a fee award for all
2 of the work expended in furtherance of its fiduciary duties on behalf of the Putative Class in that
3 action. There is no basis or reason to burden the estates with these costs. By its Motion, PERA is
4 merely seeking to remove the “contingency” from its attorneys’ “contingency fee arrangement” in
5 the Securities Litigation. This is not appropriate and the Court should leave PERA’s fees to the
6 District Court rather than burden the Reorganized Debtors with those fees.

7 PERA certainly was entitled to, and did, vigorously pursue its own interests and the interests
8 of the Putative Class members in the federal class action. However, those actions did *not* benefit
9 the administration of these Chapter 11 Cases or the estates as a whole. Accordingly, the Motion
10 should be denied.³

11 II. ARGUMENT

12 A. **Section 503(b) Strictly Limits Compensation to Extraordinary Actions That 13 Directly Provide Significant and Tangible Benefits to Creditors or the Estates as a Whole**

14 Section 503(b)(3)(D) of the Bankruptcy Code grants administrative expense priority to
15 expenses incurred by “a creditor, an indenture trustee, an equity security holder, or a committee
16 representing creditors or equity security holders . . . in making a substantial contribution in a case”
17 under chapter 9 or 11. 11 U.S.C. § 503(b)(3)(D). Section 503(b)(4) similarly grants administrative
18 expense priority for “reasonable compensation for professional services rendered by an attorney or
19 an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E)
20 of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such
21 services, and the cost of comparable services other than in a case under this title, and reimbursement
22 for actual, necessary expenses incurred by such attorney or accountant.” 11 U.S.C. § 503(b)(4).

23 In the Ninth Circuit, “the principal test of substantial contribution is the extent of benefit to
24 the estate.” *Cellular 101, Inc. v. Channel Commc’ns, Inc. (In re Cellular 101, Inc.)*, 377 F.3d 1092,
25 1096 (9th Cir. 2004) (internal quotation marks omitted); *In re 1250 Oceanside Partners*, 519 B.R.

26 ³ Even if, *arguendo*, the Court determines that PERA is entitled to any portion of its fees and
27 expenses as a substantial contribution, such fees and expenses should be subject to the same
review as all other fee requests in these Chapter 11 Cases and reviewed by the Fee Examiner and
28 other parties in interest for a determination that they are reasonable and “actual and necessary
expenses” of the estates.

1 802, 806-07 (Bankr. D. Haw. 2014). In determining whether a creditor's efforts constitute a
2 substantial contribution, courts within the Ninth Circuit have considered the following criteria: (1)
3 whether the services were undertaken solely for the benefit of the party itself or for the benefit of
4 all parties in the case; (2) whether the services were actions that would have been taken by the party
5 on its own behalf, absent an expectation of reimbursement from the estate; (3) whether the party
6 can demonstrate that its actions provided a direct, significant and demonstrable benefit to the estate;
7 (4) whether the benefit conferred upon the estate exceeds the costs sought to obtain that benefit; and
8 (5) whether the actions were duplicative of those being taken by other parties in the case, such as
9 the debtor, a trustee or an official committee. *See In re 1250 Oceanside Partners*, 519 B.R. at 806-
10 07; *In re Garcia*, 2016 WL 7324153 at*7-8 (Bankr. E.D. Cal. Dec. 14, 2016).

11 Courts construe the substantial contribution provisions in sections 503(b)(3)(D) and (b)(4)
12 narrowly. *See Mosier v. Kupetz (In re United Educ. & Software)*, 2005 WL 6960237, at *4 (B.A.P.
13 9th Cir. Oct. 7, 2005) (“Section 503(b) has been construed narrowly because administrative claims
14 are paid directly from the bankruptcy estate and reduce the funds available for creditors and other
15 claimants.”); *O'Halloran v. Lyon (In re Mortgs. Ltd.)*, 2010 WL 6259981, at *8 (B.A.P. 9th Cir.
16 Aug. 4, 2010) (“Although the court has broad discretion to grant administrative expense requests, it
17 must construe section 503(b) narrowly to keep fees and administrative costs to a minimum and
18 preserve the limited estate assets for the benefit of creditors.”); 4 *Collier on Bankruptcy* ¶
19 503.10[5][a] (16th ed. 2020).

20 “Nearly all cases have held that the contribution must provide tangible, clearly demonstrable
21 benefits to the estate. An entity’s active participation in the case, even if considerable in terms of
22 time, effort and expense, and even if positive for the overall outcome, will not of itself be sufficient
23 to constitute a substantial contribution.” *Id.* As the Ninth Circuit B.A.P. stated in *In re White*
24 *Mountain Communities Hosp., Inc.*, 2006 WL 6811025 at *6:

25 The measure of any “substantial contribution” is the extent of the benefit to the
26 estate. The benefits conferred must be direct and not “incidental” or
27 “minimal.” They must foster, and not retard, progress of the reorganization.
28 Substantial contribution “requires contribution which provides tangible
benefits to the bankruptcy estate and the other unsecured creditors.” “Services
provided solely for the creditor, such as prosecuting a creditor’s claim, are not
compensable.” “Extensive participation alone does not warrant an award of
fees as an administrative claim.” (citations omitted).

1 A creditor seeking administrative priority for its legal fees and costs bears the burden of
2 proving by a preponderance of the evidence that it has made a substantial contribution to the estate.
3 *Id.* Courts within the Ninth Circuit have observed that “[c]ompliance with the substantial
4 contribution test is difficult” because “the presumption is that creditors act mainly in their own
5 interests.” *In re Woodhall*, 141 B.R. 700, 701 (Bankr. D. Ariz. 1992); *In re D.W.G.K. Rests., Inc.*,
6 84 B.R. 684, 689 (Bankr. S.D. Cal. 1988) (“The movant bears a heavy burden in requesting
7 compensation under § 503(b).”); *In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R. 13, 21 (Bankr.
8 S.D. Cal. 1989) (“The integrity of § 503(b) can only be maintained by strictly limiting compensation
9 to extra ordinary creditor actions which lead directly to significant and tangible benefits to the
10 creditors, debtor, or the estate. While § 503 was enacted to encourage meaningful creditor
11 participation, it should not become a vehicle for reimbursing every creditor who elects to hire an
12 attorney.”). PERA plainly has not met and cannot meet this heavy burden.

13 In addition, rather than a “net benefit” approach, courts review independently each of a
14 claimant’s activities to then decide whether that activity benefitted the estate sufficiently to award
15 the claimant expenses incurred for that activity. *See In re Mortgs. Ltd.*, 2010 WL 6259981, at *8.

16 As set forth below, by PERA’s own admission, its efforts during the Chapter 11 Cases were
17 designed to protect or enhance recoveries on its own claim and the claims of other Putative Class
18 members in the Securities Litigation. As PERA has repeatedly told the Court, as Lead Plaintiff in
19 the Securities Litigation, it believed it had a fiduciary duty to the Putative Class in that action and,
20 therefore, took actions in these Chapter 11 Cases to further those interests. Thus, each of the actions
21 taken by PERA in these Chapter 11 Cases would have been taken in its own interests and the interest
22 of its Putative Class regardless of any expectation of reimbursement from the estate.⁴ Moreover,
23 there is no evidence that resolution of PERA’s Plan objections was integral to the Plan being
24 confirmed or avoided a denial of confirmation. Accordingly, the Motion should be denied.

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⁴ See Motion at 26 (“Not only were Lead Plaintiff’s interests aligned with those of Class members,
28 but Lead Plaintiff also had a fiduciary obligation, in its role as court-appointed lead plaintiff, to
protect the interests of the Class members under applicable law.”)

1 **B. PERA’s Actions in the Chapter 11 Cases Benefitted Only Itself and the Putative
2 Class in the Securities Action**

3 PERA’s actions and the work undertaken by its counsel during these cases were motivated
4 solely by self-interest, and benefitted only itself and some of the other Subordinated Securities
5 Claimants they purport to represent. PERA did nothing to benefit the estates or creditors as a
6 whole—PERA simply sought to improve its own position at the expense of other constituencies.
Indeed, PERA admits as much repeatedly in the Motion:

- 7 • “Lead Plaintiff provided the lone voice that successfully vindicated the rights
8 of its constituency...”
- 9 • “Lead Plaintiff, for the benefit of the thousands of Class members who would
10 be disenfranchised by the Debtors’ efforts, expended significant resources in
response to the Debtors’ opposition to the Rule 7023 Motion and the Class
Proof of Claim.”
- 11 • “Lead Plaintiff also contributed to creditors and the estates by successfully
12 defending the rights of Class members from proposed litigation by the Official
Committee of Tort Claimants.”
- 13 • “Lead Plaintiff’s efforts on behalf of Class members culminated in its
14 participation during multiple days of the contested confirmation hearing.”
- 15 • “At the end of that process, Debtors consented to materially improve Class
16 members’ treatment under the Plan, and the Court recognized Lead Plaintiff’s
counsel for its zealous advocacy on behalf of the Class.”

17 Motion at 4, 6, 7 (emphasis added).

18 Indeed, conspicuously absent from the Motion is any demonstration of how PERA’s
19 participation benefited the estates or other parties in interest beyond PERA’s narrow constituency.
20 Existing authority, including prior decisions from this Court, make clear that active participation in
21 a case alone does not warrant substantial contribution and provides no basis to saddle the estates
22 with the cost of legal fees and expenses. *See e.g. In re Pac. Gas & Elec. Co.*, 2005 BL 6084 at *5;
23 *In re Garcia*, 2016 WL 7324153, at *8 (“Participation alone, even in successful plan negotiations
24 will not justify a substantial contribution award.”); *In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R.
25 at 21 (“Compensation cannot be freely given to all creditors who take an active role in bankruptcy
26 proceedings, rather, it must be preserved for those rare occasions when the creditor’s involvement
truly fosters and enhances the administration of the estate.”).

27 Instead, PERA attempts to blur the interests of Subordinated Securities Claimants and the
28 estates as a whole. However, as demonstrated below, each of the various matters for which PERA

1 now seeks an attorneys' fees award benefitted only PERA and, at times, certain of the members of
2 the Putative Class in the Securities Litigation. Moreover, as is customary, if PERA is successful in
3 the Securities Litigation, PERA and its attorneys likely would be compensated out of any recoveries
4 in that action and, therefore, there is no reason or justification to burden the estates with these legal
5 fees and expenses. It has long been established that professionals "usually have to look to their
6 client for payment, not the bankruptcy estate." *In re Garcia*, 2016 WL 7324153, at *5; *see also*
7 *Matter of Consolidated Bancshares, Inc.*, 785 F.2d 1249, 1253 (5th Cir. 1986) (noting that only
8 when a creditor's attorney confers a significant and demonstrable benefit to a debtor's estate can
9 they seek payment from the estate as opposed to their client), *In re U.S. Lines, Inc.*, 103 B.R. 427,
10 430 (Bankr. S.D.N.Y. 1989), aff'd, 1991 WL 67464 (S.D.N.Y. Apr. 22, 1991) (same); *In re Gen.*
11 *Oil Distributors, Inc.*, 51 B.R. 794, 806 (Bankr. E.D.N.Y. 1985) (same). Accordingly, the Motion
12 should be denied.

13 **C. PERA's Opposition to the 105(a) Actions and the TCC Derivative Standing
14 Motion Was Designed to Protect PERA's Claims in the Securities Litigation at
A Cost to the Debtors' Estates**

15 The 105(a) Actions and the TCC Derivative Standing Motion were actions brought in good
16 faith by the Debtors and the TCC, respectively, to *protect* or *enhance* the value of the Debtors'
17 estates for the benefit of all parties in interest, and the actions taken by PERA in response to those
18 actions were designed solely to protect or enhance its claims and causes of action and cannot
19 constitute a substantial contribution.

20 As the Court is aware, the Debtors commenced an adversary proceeding (Adv. Pro. No. 19-
21 03006) and filed a motion on February 15, 2019 (together with the subsequent adversary proceeding
22 (Adv. Pr. No. 19-03039) and motion filed on June 18, 2019, the "**105(a) Actions**"), seeking to enjoin
23 the putative securities class action, filed by PERA (among other actions) and pending in the U.S.
24 District Court for the Northern District of California (the "**District Court**"), *In re PG&E Corp.*
25 *Securities Litig.*, Case No. 18-CV-03509 (N.D. Cal.) (the "**Securities Litigation**"), from proceeding
26 against certain non-debtor defendants. Although the Court ultimately denied the relief sought in the
27 105(a) Actions as to the Securities Litigation, the Debtors sought to enjoin the Securities Litigation
28 because they had a good-faith belief that the continued prosecution of the Securities Litigation

1 threatened to interfere with the Debtors' administration of these Chapter 11 Cases and deplete assets
2 of the Debtors' estates.

3 Similarly, on February 28, 2020, the TCC filed a motion [Docket No. 5972] (the "TCC
4 **Derivative Standing Motion**") requesting standing to commence an adversary proceeding to seek
5 a declaratory judgment that the claims asserted in the Securities Litigation, and similar claims raised
6 in proofs of claim by certain members of the Putative Class, were in fact claims belonging to the
7 Debtors' estates. In its motion, the TCC asserted that the claims asserted in the Securities Litigation
8 were among the Claims to be assigned to the Fire Victim Trust (for the benefit of Fire Victim
9 Claimants) as consideration for the TCC's entry into the TCC RSA. *See* TCC Derivative Standing
10 Motion at 5. Obviously, the opposition to this motion by PERA was necessary to preserve the
11 Securities Litigation and was admittedly opposed as Lead Counsel for that separate litigation.
12 Although the Court ultimately denied the relief sought in the TCC Derivative Standing Motion,
13 choosing instead to defer to the District Court and to wait for the extended claims deadline to pass
14 (*see* Docket No. 6773 at 3), that does not change the fact that had the TCC Derivative Standing
15 Motion been granted, it would have actually benefitted the estates as a whole as opposed to
16 benefitting only PERA and other Subordinated Securities Claimants.

17 The 105(a) Actions and the TCC Derivative Standing Motion were actions taken to limit the
18 potential exposure of the estates to unnecessary or unwarranted liabilities and/or to enhance
19 potential recoveries for all stakeholders, and were akin to a claim objection or any other routine
20 contested matter in which assets of the estates are at issue. Accordingly, PERA's defense of those
21 matters was to the *detriment* of the estates, and *only* benefited PERA, and potentially other
22 Subordinated Securities Claimants who are also members of the Putative Class – not the estates as
23 whole. If PERA is awarded its legal fees and expenses for its defense of the 105(a) Actions and the
24 TCC Derivative Standing Motion, it would open the door to any claimant who litigates a contested
25 matter to claim substantial contribution. This is clearly not the intention of sections 503(b)(3)(D)
26 and (4).⁵ *See In re White Mountain Communities Hosp., Inc.*, 2006 WL 6811025, at *6 ("Services

27 ⁵ PERA also asserts in its Motion that it is entitled to substantial contribution for its efforts in
28 opposing the Reorganized Debtors' *Motion for Order Approving (a) Procedures for Filing
Omnibus Objections to Claims and (b) the Form and Manner of the Notice of Omnibus Objections*

1 provided solely for the creditor, such as prosecuting a creditor's claim, are not compensable [as
2 substantial contribution].").

3 Sections 503(b)(3)(D) and 503(b)(4) are not tools designed to "penalize" a debtor for
4 unsuccessfully pursuing objections or commencing other contested matters with respect to
5 individual claims in a good faith attempt to limit the liabilities of the estates, and courts have
6 previously denied substantial contribution requests in connection with such actions by creditors.

7 *See, e.g., In re Granite Partners*, 213 B.R. 440 (Bankr. S.D.N.Y. 1997) (denying equity holders'
8 substantial contribution request for, among other things, fees and expenses incurred in defending
9 against trustee's efforts to enjoin the prosecution of certain claims against the debtors' insiders and
10 other parties by equity holders).

11 Put another way, sections 503(b)(3)(D) and 503(b)(4) do not abolish or modify the principal
12 rule in the United States that each respective party to litigation bears its own costs, including in
13 contested bankruptcy proceedings. The U.S. Supreme Court recently affirmed "[o]ur basic point of
14 reference when considering the award of attorney's fees is the bedrock principle known as the
15 American Rule: Each litigant pays his own attorney's fees, win or lose, unless a statute or contract
16 provides otherwise." *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 126 (2015). Courts will
17 not deviate from the American Rule "absent explicit statutory authority." *Id.* (citing *Buckhannon*
18 *Bd. & Care Home, Inc. v. W. Va. Dep't. of Health & Human Res.*, 532 U.S. 598, 602 (2001) (quoting
19 *Key Tronic Corp. v. United States*, 511 U.S. 809, 814 (1994)). The Bankruptcy Code's substantial
20

21 [Docket No. 7758] (the "**Omnibus Objection Procedures Motion**"). It is worth noting that the
22 hearing at which PERA appeared in opposition to the Omnibus Objection Procedures Motion was
23 held after the Plan was confirmed and courts have previously found that it is improper to grant a
24 substantial contribution award for actions taken after a chapter 11 plan has been confirmed. *See In*
25 *re Seaman*, 588 B.R. 790, 796-97 (Bankr. W.D. Mich. 2018) ("Any contribution to a Chapter 11
26 case, substantial or otherwise, must occur prior to confirmation of plan in order to be compensable
27 as an administrative expense."). Regardless, as with the other efforts for which PERA seeks
28 substantial contribution, there is no indication in the Motion as to any benefit to the Debtors'
estates as a whole from PERA's objection to the Debtors' Omnibus Claims Objection Procedures
(as defined in the Omnibus Objection Procedures Motion). PERA's objection to those procedures
did not result in or lead to the resolution of any Subordinated Securities Claims. Similar to the
105(a) Actions and the TCC Derivative Standing Motion, PERA's actions in connection with the
Omnibus Claims Objection Procedures were in furtherance of its own interests and agenda, and as
such, a claim for substantial contribution for these efforts cannot succeed.

1 contribution provisions do not provide such explicit authority and, indeed, Courts take a narrow
2 approach to substantial contribution requests for precisely this reason. *See In re Standard Metals*
3 *Corp.*, 105 B.R. 625, 630 (Bankr. D. Colo. 1989) (“The Court is concerned about the potential
4 ramifications of opening the door to Section 503(b)(3) claims too far. That concern is consistent
5 with the basic tenant that a creditor’s attorney must ordinarily look to its own client for payment,
6 unless the creditor’s attorney rendered services on behalf of the reorganization, not merely on behalf
7 of his client’s interest, and conferred a significant and demonstrable benefit to the debtor’s estate
8 and the creditors.”) (internal quotations omitted).

9 No such benefit accrued here. PERA defended these actions to preserve its claims and the
10 claims of certain other Subordinated Securities Claimants and, in fact, PERA admits its activities in
11 defense of these actions actually burdened the estates and took away potential assets. *See Motion*
12 at 10 (quoting the Court’s decision on the 105(a) Actions, “prosecution [of the Securities Litigation]
13 might be costly to [the Debtors], their insurers, or both.”).

14 PERA’s opposition to the 105(a) Actions was solely done in connection with its role as Lead
15 Plaintiff in the Securities Litigation; there is no support nor any reason why a plaintiff in a separate
16 lawsuit that the Debtors seek to enjoin should be compensated by the Debtors for opposing the
17 action to enjoin that separate litigation. Similarly, by defeating the TCC Derivative Standing
18 Motion, PERA retained “ownership” and “control” of its asserted claims (and the sole right to
19 recover on those claims) and defeated the TCC’s efforts to claim those causes of action as additional
20 assets of the estates to be transferred to the Fire Victim Trust. PERA’s action in these instances
21 served to benefit only one narrow constituency (PERA and a subset of the Subordinated Securities
22 Claimants) at the expense of all other stakeholders of the estates. *See e.g., In re Pac. Gas & Elec.*
23 *Co.*, 2005 BL 6084, at * 5; *In re RS Legacy Corp.*, 2016 WL 1084400, at *4 (Bankr. D. Del. Mar.
24 17, 2016) (there was no substantial contribution where the movant’s “intended end result therefore
25 would diminish the funds available to a certain group of stakeholders while not enhancing overall
26 recoveries to the creditor body”); *Derivative Plaintiffs v. Columbia Gas Sys. (In re Columbia Gas*
27 *Sys.)*, 2000 WL 1456298, at *6 (D. Del. Sept. 20, 2000).

28

1 **D. PERA’s Unsuccessful Efforts to Obtain Class Certification Did Not Enhance**
2 **Recoveries to All Creditors as Required Under Section 503(b)**

3 PERA filed and prosecuted its motion [Docket No. 5042] (the “**Original 7023 Motion**”)
4 seeking to have this Court certify, postpetition, a class comprising the members of the Putative
5 Class. PERA took this step not out of a selfless desire to protect the interests of its fellow
6 Subordinated Securities Claimants and advance the administration of these Chapter 11 Cases, but
7 rather because it had much to gain from the success of class certification—namely, the payment of
8 contingency fees and expenses in connection with any settlement or successful resolution of the
9 proposed class claim. These contingency fees are the very same fees and expenses PERA and its
10 attorneys may recover in connection with the Securities Litigation. Thus, to the extent they are
11 successful in obtaining a recovery on behalf of the Putative Class, PERA’s attorneys will be able to
12 make an application to the District Court for fees in connection with pursuing recoveries on behalf
13 of the Putative Class, including any legitimate efforts in these Chapter 11 Cases.

14 Despite receiving actual notice of the Debtors’ motion to establish the bar date and the
15 attendant noticing procedures [Docket No. 1784] (the “**Bar Date Motion**”), PERA did not raise any
16 objections to the Bar Date Order. PERA’s submissions in support of this Motion demonstrate that
17 its counsel not only received, but analyzed and reviewed the Bar Date Motion. *See* [Docket No.
18 8950-2] at 11; [Docket No. 8950-3] at 15, 17; [Docket No. 8950-4] at 10. Had PERA timely
19 objected to the Bar Date Motion, it could have obviated the Original 7023 Motion and the cost and
20 expense of setting a further bar date and proving additional notice. PERA’s delay in raising these
21 issues – even though it had already been active in these cases – actually cost the Debtors a significant
22 amount and expense. By not making a timely objection to the Bar Date Motion, PERA was able to
23 preserve the ability to file a proof of claim and seek class status, thus giving it the opportunity to
24 obtain fees as class counsel from any recovery.

25 Following two rounds of briefing and extensive argument, the Court denied the Original
26 7023 Motion and instead, on its own initiative and over PERA’s objection, decided to extend the
27 bar date to allow absent class members to file individual proofs of claim. *See Memorandum*
28 *Decision Regarding Motion to Apply Rule 7023* [Docket No. 5887] (the “**Memorandum Decision**”)
29 at 5, and the Court’s Order denying the Original 7023 Motion [Docket No. 5943] (the “**7023**

1 **Order**”), at ¶¶ 1-2. The Court then, again on its own initiative and over PERA’s objection, extended
2 the deadline for Subordinated Securities Claimants to file claims in the Chapter 11 Cases, and the
3 Debtors provided actual notice of the extended Deadline to more than 300,000 potential securities
4 claimants in strict accordance with the Court’s direction. As noted above, PERA objected to the
5 Court’s proposed extension of the bar date and appealed the Court’s Memorandum Decision and
6 the 7023 Order. Clearly, these actions were in the furtherance of PERA’s own self-interest and not
7 those of the estates as a whole.

8 At least one court has denied a request for substantial contribution that was based, in part,
9 as PERA seeks here, on an unsuccessful attempt to certify a class of claims pursuant to Bankruptcy
10 Rule 7023. In *RS Legacy Corp.*, the applicant sought payment of fees and expenses as substantial
11 contribution incurred in connection with, among other things: (i) claimant’s unsuccessful attempt to
12 certify a postpetition class of holders of gift card claims in the debtor’s chapter 11 case;
13 (ii) claimant’s participation in several other motions and adversary proceedings regarding the rights
14 of gift card holders; and (iii) claimant’s efforts to improve notice to holders of gift card claims
15 during the chapter 11 case. 2016 WL 1084400, at *2. The Bankruptcy Court for the District of
16 Delaware held that the applicant had failed to demonstrate that its efforts advanced the interests of
17 all creditors as opposed to its own. In particular, the Court noted that the applicant’s efforts to seek
18 priority treatment for its members would merely reallocate “distributions under the Plan to the
19 detriment of the general unsecured creditors . . . [diminishing] the funds available to a certain group
20 of stakeholders while not enhancing overall recoveries to the creditor body.” *Id.* at *4. The Court
21 further noted that a party seeking class certification has a “strong economic self-interest in obtaining
22 certification of the class because [their] counsel would then be entitled to attorneys’ fees” and
23 concluded that none of the actions taken by the applicant went beyond what would be expected of
24 a creditor seeking to “enhance his recovery and have his counsel fees paid.” *Id.* Similarly, PERA’s
25 actions in connection with the Original 7023 Motion sought only to improve its own position and
26 the position of the members of the Putative Class, and did nothing to enhance overall recoveries in
27 these Chapter 11 Cases.

1 A similar result was found by the Delaware District Court in *Columbia Gas Sys.*, when it
2 considered a movant's appeal of a Bankruptcy Court's decision denying a substantial contribution
3 claim brought by attorneys representing certain shareholders in derivative class actions. 2000 WL
4 1456298 at *2. In that case, the Delaware District Court upheld the denial of a substantial
5 contribution claim, noting that the claimants acted "mainly in the interests of their own clients when
6 they brought and prosecuted the securities class actions." *Id.* at *6. Importantly, the District Court
7 drew a distinction between obtaining a benefit for creditors as a whole as opposed to for a particular
8 creditor or group of creditors, stating that, "[a]lthough the derivative class actions may have
9 conferred some benefit upon certain unsecured creditors (e.g., the shareholders) or possibly upon
10 the estate itself, given the record, the court cannot conclude that this benefit was enjoyed by the
11 creditors as a whole." *Id.* The same must be said of PERA's actions here in connection with the
12 Original 7023 Motion.

13 PERA goes to great lengths in its Motion to attempt to take credit for any benefit to the
14 administration of the Chapter 11 Cases that resulted from the additional noticing efforts following
15 denial of the Original 7023 Motion. However, any benefits accrued substantially—if not entirely—
16 to PERA and similarly situated current or former securities holders. Moreover, even if these
17 additional noticing efforts were considered to provide a broader benefit to the estates, as noted
18 above, the notion of extending the bar date and providing additional noticing to Putative Class
19 members was implemented by the Court on its own initiative and was approved over PERA's
20 objection. PERA cannot now claim a substantial contribution for a noticing effort it did not propose
21 and, in fact, opposed.

22 Regardless, even if PERA's actions with respect to the Original 7023 Motion were motivated
23 solely by a desire to improve notice to potential securities claimants, courts have previously held
24 that such actions are insufficient to constitute a substantial contribution. *See, e.g., In re Standard*
25 *Metals Corp.*, 105 B.R. at 630 n.6 ("Applicants' efforts to obtain a determination that the notice [of
26 the bar date] was in fact insufficient is not the type of fact which when uncovered amounts to a
27 substantial contribution to the estate or the creditors other than the bondholders."); *RS Legacy Corp.*,
28 2016 WL 1084400, at *4.

1 Accordingly, PERA’s actions in connection with the Original 7023 Motion do not constitute
2 a substantial contribution, which would entitle PERA to payment of its fees and expenses.

3 **E. PERA’s Objections to Plan Confirmation, Which Did Not Result in Additional
4 Funds Becoming Available for the Debtors’ Estates or Other Parties in Interest,
5 Were Not Extraordinary**

6 On May 15, 2020, PERA filed their objections to confirmation of the Plan [Docket No. 7296]
7 (the “**Confirmation Objection**”) raising a number of issues with respect to the treatment of the
8 Subordinated Securities Claims under the Plan. Each of PERA’s Plan objections sought to improve
9 the treatment of, and recoveries for, PERA itself and only *some of* the Subordinated Securities
10 Claims under the Plan—specifically, Class 10A-II and Subordinated Securities Claimants who
11 would be members of the Putative Class—and not any other classes or claims. However, as noted
12 above, the sole reason Class 10A-II did not accept the Plan was the vote of a disgruntled shareholder
13 with a large liquidated but unsubstantiated claim. Certain matters in the Confirmation Objection
14 were settled through mediation, and others were overruled by this Court’s memorandum decision
15 with respect to Plan confirmation [Docket No. 8001] and the Confirmation Order, both of which
16 PERA has appealed. *See Notice of Appeal and Statement of Election to Have Appeal Heard by
District Court* [Docket No. 8243].

17 At no point did PERA’s actions in connection with Plan confirmation or the Confirmation
18 Hearing go beyond promoting its own interests and those of the narrow constituency it purports to
19 represent. As PERA concedes in the Motion, through “the DS Objection, and the Confirmation
20 Objection . . . Lead Plaintiff was able to achieve material improvements to the treatment of Class
21 members through the Plan.” Motion at 18 (emphasis added). Again, the Motion does not set forth
22 any purported benefit of PERA’s actions to the estates as a whole (because there were none), and,
23 in any case, PERA did not undertake the kind of plan activities courts have previously deemed
24 worthy of substantial contribution awards.

25 The proposal and negotiation of settlements and related efforts with respect to the
26 formulation of a plan of reorganization is a common ground for creditors seeking to assert claims
27 for substantial contribution. However, mere participation, particularly when such participation is
28 only in furtherance of the creditors’ own interests, does not support a claim for substantial

1 contribution. A creditor must do much more – it must be essential to the plan process. The
2 Bankruptcy Court for the Eastern District of California explained this distinction in *In re Garcia*,
3 2016 WL 7324153 at *8 (citations omitted) stating:

4 Creditors who have an active role in the confirmation process frequently
5 seek substantial contribution claims. Participation alone, even in successful
6 plan negotiations will not justify a substantial contribution award.
However, where creditors were essential to the plan process, courts have
found substantial contribution by the creditors.

7 As noted above, this Court addressed a similar request for substantial contribution by the
8 City of Palo Alto (the “**City**”) in connection with plan confirmation in the Utility’s 2001 chapter 11
9 case, *In re Pacific Gas & Electric Co.* There, the City claimed that its efforts in the 2001 case
10 warranted substantial contribution, including, efforts it described as “(1) Moderating and ultimately
11 defeating PG&E’s first attempted plan of reorganization . . . (2) Moderating the CPUC/Committee
12 Plan so that it could become the foundation for the [confirmed plan]; (3) Improving the Settlement
13 Agreement that was the centerpiece of the [confirmed plan]; and (4) Preventing or moderating the
14 adverse effects of various of PG&E’s excessive actions that were not in the best interest of creditors”
15 amounted to a substantial contribution. 2005 BL 6084, at *2. This Court denied the City’s
16 substantial contribution request and found that there was no evidence that the City “decisively
17 contributed” to the settlement and confirmation of the plan. *Id.* At *4. This Court also noted that,
18 in a complex case such as the Utility’s previous chapter 11 case, it was “difficult to single out any
19 particular party whose contribution can be said to be ‘substantial’ within the meaning of section
20 503(b) and the case law that has interpreted it.” *Id.*, at *5. The same must be said of PERA’s
21 parochial efforts in connection with confirmation of the Plan.

22 Similarly, in *In re Standard Metals Corp.*, the Bankruptcy Court for the District of Colorado
23 denied a request for substantial contribution made by an attorney representing a group of
24 bondholders. In that case, the applicants asserted that their work during the chapter 11 case resulted
25 in the addition of their clients as a class of creditors to the plan, adequate disclosure of the plan to
that class, and a settlement of all claims of that class—the very same type of plan related activities
26 that PERA points to in support of its Motion. The Bankruptcy Court in *Standard Metals*, however,
27 denied the request, finding that the bondholders’ actions in connection with plan confirmation were
28

1 designed solely for their own benefit and not the estates as a whole. In so holding, the Court stated
2 that “those actions and the results achieved are commendable. Nevertheless, the Court concludes
3 that the Applicants’ actions were taken primarily for the benefit of their clients and not for the estate
4 as a whole” and that “there was no actual and demonstrable benefit to the estate and the creditors.”
5 105 B.R. at 630-31.

6 Courts in the Ninth Circuit, including this Court, generally have found a creditor’s
7 contributions in connection with plan confirmation sufficient to warrant a substantial contribution
8 only where the applicant’s efforts directly benefited the estates as whole, such as by funding or
9 proposing a plan of reorganization or taking other actions that enhanced recoveries to creditors as a
10 whole and not their own class or constituency. *See, e.g., In re Cellular 101, Inc.*, 377 F.3d at 1097
11 (holding that applicant had made a substantial contribution where it had “formulated and presented
12 the only reorganization plan that was put forth to the bankruptcy court. This plan resulted in the
13 payment to creditors of 100% of the creditors’ allowed claims with funds remaining for the equity
14 security holders. [The movants] also agreed to waive their prepetition claims against Cellular.”); *In*
15 *re 1250 Oceanside Partner*, 519 B.R. at 808-809 (finding sufficient benefit from the claimant by
16 “roughly doubling the fund from which they would be paid . . . [and] . . . by eliminating objections
17 and paving the way to a confirmed plan. The [movants’] contribution was substantial because it
18 obviated further litigation and, perhaps, a denial of plan confirmation.”); *In re Lab. Skin Care, Inc.*,
19 2014 WL 1312368, at *2 (Bankr. N.D. Cal. Mar. 28, 2014) (approving substantial contribution
20 request where the applicant creditor had prepared, prosecuted, and partially funded a plan of
21 reorganization).

22 In contrast to those cases, here, PERA did not propose the Plan, fund the Plan, agree to
23 compromise or settle their claims, materially increase recoveries for a broad group of creditors, or
24 otherwise ensure or avoid a denial of confirmation of the Plan. Indeed, PERA’s efforts have not
25 resulted in the settlement or resolution of a single Subordinated Securities Claim nor can it be said
26 that PERA even settled or resolved all of its Plan objections; rather, PERA agreed to certain revised
27 treatment as a result of mediation before Ret. Judge Newsome and continued prosecuting certain
28 other objections, which the Court overruled and which continue to burden the estates in connection

1 with PERA's appeal of the Confirmation Order. Such actions cannot constitute substantial
2 contribution. *See In re White Mountain Communities Hosp., Inc.*, 2006 WL 6811025, at *7 (denying
3 substantial contribution request where the Bankruptcy Court found that the movants "did not
4 facilitate the progress of the case; in fact, their efforts arguably impaired progress, causing Debtor
5 to incur further administrative fees to fight for confirmation of a plan overwhelmingly approved by
6 creditors.").

7 **III. ANY CLAIM FOR SUBSTANTIAL CONTRIBUTION SHOULD BE SUBJECT TO
8 REVIEW BY THE FEE EXAMINER**

9 As set forth above, the Reorganized Debtors do not believe PERA's actions in the Chapter
10 11 Cases warrant any reimbursement or award as substantial contribution. However, should the
11 Court determine that any of PERA's actions constitute a substantial contribution, any portion of the
12 fees and costs claimed in connection with that award should be subject to review by the Fee
13 Examiner and other parties in interest, like all other professionals in these Chapter 11 Cases. In
14 addition, as discussed above, any portion of the substantial contribution claim related to actions
15 taken after confirmation of the Plan should be disallowed. *See supra* note 5.

16 When assessing substantial contribution applications for attorneys' fees, courts within the
17 Ninth Circuit have stated that the same principles for assessing an estate professional's fee
18 application should be applied. *See In re White Mountain Communities Hosp., Inc.*, 2006 WL
19 6811025, at *8 ("In addition to proving that it made a 'substantial contribution' to the estate, a
20 creditor seeking to recover compensation as an administrative expense under section 503(b) must
21 also demonstrate that its request represents 'actual, necessary expenses' and 'reasonable
22 compensation' for professional services."); *N. Sports, Inc. v. Knupfer (In re Wind N' Wave)*, 509
23 F.3d 938, 942 (9th Cir. 2007) ("Subsection (b)(4) specifically allows compensation for services
24 rendered by a creditor's attorney, and sets forth compensation standards that mirror those governing
25 fee awards for debtors' attorneys under Section 330(a) of the Bankruptcy Code."). In resolving
26 whether the costs of contesting a denial of a 504(b)(4) application were claimable, after applying
27 several cases in the context of section 330(a), the Ninth Circuit Court of Appeals stated:
28

1 We recognize that *Nucorp, Smith, and Riverside-Linden* dealt with Section
 2 330(a) of the Bankruptcy Code--which addresses compensation for debtor's
 3 attorneys--while the instant case falls under Section 503(b)(4), which
 4 governs compensation for creditors' attorneys. We do not find that this
 5 distinction affects our holding. Section 503(b)(4) states that the court shall
 6 allow "reasonable compensation" for services rendered by a creditor's
 attorney "based on the time, the nature, the extent, and the value of such
 services, and the cost of comparable services other than in a case under this
 title." 11 U.S.C. § 503(b)(4). This language was adopted as part of the
 Bankruptcy Reform Act of 1978, and is nearly identical to the language
 used in that Act to compensate officers under Section 330(a).

7 *Id.* at 944.

8 Applying this principle, the Bankruptcy Court for the Eastern District of California set forth
 9 the following criteria for assessing a claim for attorneys' fees under section 503(b)(4) (internal
 citations omitted):

10 The amount of an administrative expense for the attorneys' fees of a creditor
 11 must be for a "substantial contribution" to the Chapter 11 case and must be
 12 reasonable. Even when the court finds that the services billed by an attorney
 13 are "actual," meaning that the fee application reflects actual time entries
 14 charged for services, the attorney must still demonstrate that the work
 15 performed was necessary and reasonable. An attorney must exercise good
 16 billing judgment with regard to the services provided because the court's
 17 authorization to employ an attorney to work in a bankruptcy case does not
 18 give that attorney "free reign to run up a [professional fees and expenses]
 19 without considering the maximum probable [as opposed to possible]
 20 recovery." According to the Court of Appeals for the Ninth Circuit, prior
 21 to working on a legal matter, the attorney, or other professional as
 appropriate, is obligated to consider:

- 22 (a) Is the burden of the probable cost of legal [or other
 23 professional] services disproportionately large in relation to
 the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not
 rendered?
- (c) To what extent may the estate benefit if the services are
 rendered and what is the likelihood of the disputed issues
 being resolved successfully?

24 The standards used to allow fees and costs awarded pursuant to 11 U.S.C.
 25 § 330 apply to the award of an administrative expense pursuant to 11 U.S.C.
 26 § 503(b)(4).

27 *In re Garcia*, 2016 WL 7324153, at *16–17 (citations omitted).

28 Accordingly, even if the Court determines that PERA has made a substantial contribution
 based on some or all of the assertions set forth in the Motion, the attorneys' fees it claims must be
 subject to a similar analysis that a professional's fee application would be under section 330 of the
 Bankruptcy Code. In these Chapter 11 Cases, this requires any potential substantial contribution

1 award be subject to the Fee Procedures previously approved by this Court and be submitted for
2 review by the Fee Examiner and other parties interest in these Chapter 11 Cases for a determination
3 that such fees and expenses are reasonable and “actual and necessary expenses” of the estates. *See*
4 *In re Energy Future Holdings Corp.*, 593 B.R. 217, 252 (Bankr. D. Del. 2018) (requiring a
5 successful applicant for substantial contribution to submit their fees to a fee committee and the U.S.
6 Trustee).

7 **IV. CONCLUSION**

8 PERA has not satisfied its heavy burden for an award of compensation from these estates.
9 Accordingly, the Court should (i) deny the Motion and (ii) grant the Reorganized Debtors such other
10 relief that is just and proper.

11 Dated: November 13, 2020

12 **WEIL, GOTSHAL & MANGES LLP**
13 **KELLER BENVENUTTI KIM LLP**

14 /s/ Richard W. Slack
15 Richard W. Slack

16 *Attorneys for the Debtors and Reorganized Debtors*